

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICHOLAS FRANCIS DEYO,
Petitioner

v.

THE PEOPLE OF THE
COMMONWEALTH OF
PENNSYLVANIA *et al.*,
Respondents

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CIVIL ACTION

No. 23-2733

ORDER

AND NOW, this 20th day of October, 2023, upon independent consideration of the Petition for Writ of *Habeas Corpus* filed by Petitioner Nicholas Francis Deyo (Doc. No. 1) and U.S. Magistrate Judge Pamela A. Carlos's Report & Recommendation (Doc. No. 7) (the "R&R"), to which no objections were filed, it is **ORDERED** that:

1. The R&R (Doc. No. 7) is **APPROVED** and **ADOPTED**.¹
2. The Petition for Writ of *Habeas Corpus* (Doc. No. 1) is **SUMMARILY DISMISSED** without prejudice.
3. There is no probable cause to issue a certificate of appealability.²

¹ The R&R adequately addresses that Mr. Deyo has not exhausted available state court remedies or presented any "extraordinary circumstances" necessary to excuse the exhaustion requirement for a pretrial habeas petition as required under *Moore v. DeYoung*, 515 F.2d 437 (3d Cir. 1975). Mr. Deyo did not file objections to the R&R, and the time for objections expired on September 13, 2023.

² A certificate of appealability may issue only upon "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). A petitioner must "demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Lambert v. Blackwell*, 387 F.3d 210, 230 (3d Cir. 2004). The Court concludes that U.S. Magistrate Judge Carlos is correct there is no probable cause to issue such a certificate in this action.

4. The Clerk of Court shall mark this case **CLOSED** for all purposes, including statistics.

BY THE COURT:



GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE